

PATENT

Atty Docket: 20147-434PCT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Bret, *et al.*

Serial No: 10/595,745

Filed: September 5, 2006

For: PRODUCT OF FIBROUS MATERIAL  
PROVIDING A FRESH FEELING FOR  
SKIN BY CONTACT THEREWITH

Confirmation No: 5863

Art Unit: 1615

Examiner: AL-AWADI, DANAH

September 14th, 2009

**DECLARATION**

Commissioner of Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Sir:

1. My name is Bruno Bret and I am one of the named inventors of the above-identified patent application ("the '745 Application").

2. I obtained:

- Industrial Pharmacy DESS (Diploma in Advanced Studies) IPIL Lyon – 1987)
- Doctor of Pharmacy diploma (Lyon 1986).

Experiences: Industrial pharmacy and Personal Care & Cosmetic development since more than 20 years

3. It is my understanding that the Examiner has rejected the '745 Application under 35 U.S.C. § 103(a) over Bret, US 6,146,648 ("Bret"). In the most recent Office

Action, I understand that the Examiner wrote the following as the basis for his rejection:

“Applicant’s argument with regards that the Bret patent does not teach a C10-C14 carbon chain and an alcohol with a C10-C14 is not persuasive because teaches having available C10-C14 alcohol and C10-C14 fatty ester.

Regarding applicants argument that Bret only utilizes this C16+fatty alcohols and C24+waxy esters, examiner would like to point out that 2144.09 (I) of the MPEP states “A prima facie case of obviousness may be made when chemical compounds have very close structural similarities and similar utilities. “An obviousness rejection based on similarity in chemical structure and function entails the motivation of one skilled in the art to make a claimed compound, in the expectation that compounds similar in structure will have similar properties In re Payne”. Furthermore, 2144.09 (II) states “Compounds which are position isomers (compounds having the same radicals in physically different positions on the same nucleus) or homologs (compounds differing regularly by the successive addition of the same chemical group, e.g., by –CH<sub>2</sub>-groups) are generally of sufficiently close structural similarity that there is a presumed expectation that such compounds possess similar properties In re Wilder.”

3. I believe that it maybe worthwhile setting out the present invention so as to clarify the aspects of the present invention which are not in the prior art in general and in the Bret patent in particular and those features which are not.

4. At the time the invention described in the '745 application was invented the art relating to product fibrous material, and more particularly to such product fibrous material treated in surface with an agent, the product fibrous materials were products treated with a composition to impart a softness feeling when put in contact with the

skin of a user and not to impart a freshness feeling when put in contact with a skin of a user.

5. The Bret patent proposes such a product fibrous material treated with a composition in order to impart such a softness feeling to the skin of a user.

6. I am one of the named inventor of the Bret patent and when making the invention described in the Bret patent, I and the other inventors discovered that for obtaining a product fibrous material having such a soft feeling for the skin, the product fibrous material had to be treated with a composition containing, in part, at least one linear fatty alcohol having at least 16 carbon atoms and at least one waxy ester having a total of at least 24 carbon atoms.

7. I and the other inventors of the Bret patent also discovered that the waxy ester having a total of at least 24 carbon atoms could be obtained starting from saturated fatty acids having 6 to 24 carbon atoms and saturated linear fatty alcohol having 6 to 24 carbon atoms but that in any case, the waxy esters must have a total of at least 24 carbon atoms.

8. When making the invention of the '745 Application, i.e. when making a product fibrous material imparting a freshness feeling to the skin when put into contact with a skin of a user, we immediately discarded the composition of the Bret patent because a composition such as disclosed in the Bret patent does not impart a freshness feeling to the skin when put into contact therewith but only impart a softness feeling.

9. In fact, when I and the other inventors of the '745 application made the invention which is the subject matter the '745 application, we never expected that the compounds of the Bret patent could work for imparting freshness to the skin because

the Bret patent only discloses products imparting a softness feeling and not a freshness feeling.

10. I also do not believe that the skilled worker in the field of the product fibrous material looking for such a product fibrous material imparting a freshness feeling to the skin will have expected that the waxy esters and fatty alcohols disclosed in the Bret patent will impart such a freshness feeling to the skin, because they are only disclosed, in the Bret patent, as imparting softness to the fibrous material.

11. I also believe that should the reader of the Bret patent have tested the composition of the Bret patent, he will have only verified that such a composition is not appropriated for imparting a freshness feeling to the skin.

12. Consequently, we directed our searches towards other compositions and arrived to the invention of the '745 Application, i.e. to the treatment of the product fibrous material with a composition containing at least one fatty acid ester having a total of between 10 and 14 carbon atoms and an alcohol having from 10 to 14 carbon atoms.

13. Thus, the invention described in the '745 Application make use of at least one fatty acid ester having at the minimum 10 carbon atoms and at the maximum 14 carbon atoms whereas the Bret patent teaches that the at least one acid ester must have at least 16 carbon atoms.

14. In the same manner, in the invention described in the '745 Application it is necessary to use at least one alcohol having at the minimum 10 carbon atoms and at the maximum 14 carbon atoms whereas in the Bret patent, the alcohol must have at least 16 carbon atoms.

15. Therefore, the composition used in the Bret patent is indeed different from the composition used in the '745 Application and the use of different fatty acid esters and

alcohol leads to a different result: a softer feeling in the Bret patent and a freshness feeling in the '745 Application.

16. I understand that the examiner considers that because in claim 4 of the Bret patent teaches that the fatty acid ester may be obtained from C6 to C24 fatty alcohol, then the invention of the '745 Application is not inventive.

17. But claim 4 of the Bret patent depends from claim 1 so that it teaches that the waxy ester which is obtained from a linear fatty alcohol having 6 to 24 carbon atoms must have at least 16 carbon atoms.

18. Therefore, the Bret patent does not disclose the use of a fatty alcohol having 6 to 24 carbon atoms for obtaining a softening lotion but for obtaining the waxy ester which is one of the components of the softening lotion.

19. I understand that the examiner considers that "compounds which are position isomers or homologs i.e. compounds differing regularly by the successive addition of the same chemical group, e.g., by  $-CH_2$ -groups are generally of sufficiently close structural similarity that there is a presumed expectation that such compounds possess similar properties."

20. I do not really understand this statement of the examiner but in any case, even if the waxy esters and alcohols disclosed in the Bret patent indeed differ regularly by the successive addition of the same chemical group from the waxy ester and alcohol used in the composition of the '745 Application, they do not possess similar properties: in the Bret patent the waxy ester and alcohol which are precisely and specifically taught as imparting a softer feeling whereas the different and specific waxy esters and alcohols used in the '745 Application impart a freshness feeling to the skin.

21. I declare that all statements made herein on my own knowledge are true and that all statements made on information and belief are believed to be true; and that these statements were made with the knowledge that wilful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code and that such wilful false statements may jeopardize the validity of the application or any patent issuing there from.

Date: September 14<sup>th</sup> 2009

  
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Bruno BRET